

REMARKS

Claims 1-6 are pending in this application. Claims 1-4 have been amended for consistency of a tubular pin holder. Support for the amendment to claim 1 can be found at page 1, lines 20-25 and at page 2, line 24. Support for the amendment to claim 3 can be found at page 1, lines 10-14. Applicants respectfully request favorable reconsideration in view of the claim amendments and in view of the following remarks.

Claim Rejections – 35 USC § 102

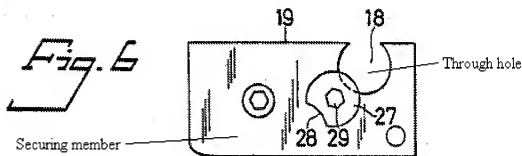
Claims 1-6 were rejected under 35 USC § 102(b) as being anticipated by US 4,827,918 to Olerud (“Olerud”), and the method as inherent in an ordinary use of the device. Applicants respectfully traverse this rejection because the Olerud reference fails to disclose each and every element of independent claims 1 and 3.

Claim 1 as amended recites a bone spreader having a parallel guide system with a guide bar having a noncircular cross section, a first pin and a second pin, a first tubular pin holder and a second tubular pin holder connected to one another by the parallel guide system. The first and second tubular pin holders configured to receive the first pin and second pin, respectively, to couple adjacent bone parts that are to be spread apart to the parallel guide system. The at least one of the first and second tubular pin holders having a locking device for a respective one of the first and second pins after being positioned therethrough. The first and second pins each have at least one transverse groove formed therein. The locking device includes a locking finger which is guided between a locking position and a release position in a transverse movement tangentially with respect to the tubular pin holder. The locking finger being configured to engage in the groove in the locking position. The tubular pin holders are arranged in planes which are perpendicular to the guide bar.

Unlike claim 1, Olerud fails to teach a device for spreading bones that contains a tubular pin holder. Tubular as defined by Webster’s New World College Dictionary, 4th Edition is “of or shaped like a tube” with tube being defined as “a hollow cylinder or pipe of metal, glass, rubber, etc., usually long in proportion to its diameter, used for conveying fluids, etc.” with cylinder being defined as “in geometry, a solid figure consisting of two parallel bases in the form of congruent, closed curves joined by a smooth, continuous, closed surface” (emphasis added). Securing member 9 is defined by Olerud at col. 2 lines 38-40 as “consists of a block of a

substantially parallel piped shape." A rectangular block, to a person of ordinary skill in the art, is not tubular. Furthermore, the portion of the securing member that receives the pins, through hole 18, as defined by Olerud at col. 3, lines 8-19 and FIG. 6:

"In the securing member 9 there is further provided a through hole 18 extending from the upper side thereof and which as seen in FIG. 6 has the centre thereof located at a distance from the surface 19 of the securing member adjacent to the support member which is less than the radius of the hole whereby the hole in question will be open in direction towards the support member." (emphasis added)



is configured with a wall that is non-continuous and open on the side. The through hole cannot be considered tubular as it does not form a tube with a smooth, continuous, closed surface within the ordinary and plain meaning of tubular. Thus, neither of the portions, securing member 9 or through hole 18, relied upon in Olerud teach or suggest a tubular pin holder.

Accordingly, since Olerud fails to teach or disclose at least one claimed feature in independent claim 1, Applicant respectfully submits that the rejection under 35 USC § 102(b) be withdrawn in favor of an indication of allowance, which is earnestly solicited. Claim 2 being dependent upon claim 1, should be allowable for the reasons as set forth in support of claim 1 as well as for the additional features. An indication in that regard is hereby respectfully requested.

Also, unlike amended claim 1, Olerud fails to teach a guide bar having a non-circular cross section and tubular pin holders being arranged rigidly on the guide bar to guide parallel displacement of the bones. Instead Olerud teaches a guide bar 2 (screw spindle) that is circular in cross section. Furthermore, the securing member of Olerud is pivotably mounted to the support member so that the securing member can be freely displaced in relation to the bone screw and may be pivoted (see col. 3, lines 29-32) to fix the angular position of the support

member relative to the securing member (see col. 3, lines 60-61). Olerud is silent regarding guiding a parallel displacement of the bones. The tubular pin holder of Applicant is not pivotable and instead is arranged rigidly to the guide bar to guide parallel displacement of the bones. The non-circular cross section of Applicants' guide bar and the rigid tubular pin holders act to guide the parallel displacement of the bones and to prevent pivoting of the bones out of alignment when the guide bar is displaced longitudinally. Thus, the device of Olerud does not anticipate because there is no teaching or suggestion of a guide bar having a noncircular cross section and tubular pin holders being arranged rigidly on the guide bar to guide parallel displacement of the bones.

Accordingly, since Olerud fails to teach or disclose at least one claimed feature in independent claim 1, Applicant respectfully submits that the rejection under 35 USC § 102(b) be withdrawn in favor of an indication of allowance, which is earnestly solicited. Claim 2 being dependent upon claim 1, should be allowable for the reasons as set forth in support of claim 1 as well as for the additional features. An indication in that regard is hereby respectfully requested.

Claim 3 as amended recites a method for spreading bone parts apart by introducing a first pin into a first bone part and a second pin into a second bone part; introducing a free end of the first pin into a first tubular pin holder of a parallel guide system; securing the free end of the first pin to the first tubular pin holder with a first locking device; moving the first and second pins relative to one another by operation of the parallel guide system to spread apart the first and second bone parts; and implanting a cervical intervertebral prosthesis between the first and second bone parts.

Unlike amended claim 3, Olerud does not inherently perform the claimed process because Olerud teaches at col. 1, lines 7-11, that the "present invention refers to a fixing instrument which is intended to secure two vertebrae in position relative to each other". Or in other words, Olerud is directed to a device which fuses two bones together without an intervening prosthesis. Instead, as taught by Applicant at page 1, lines 14-20, "This type of spreader is especially suitable for distraction of two cervical vertebral bodies for the purpose of implantation of a cervical intervertebral prosthesis". Thus, the method of Olerud does not, in its normal and usual operation, perform the same method as Applicant because Olerud does not teach or suggest implanting a cervical intervertebral prosthesis between the bone parts.

Accordingly, since Olerud fails to teach or disclose at least one claimed feature in independent claim 3, Applicant respectfully submits that the rejection under 35 USC § 102(b) be withdrawn in favor of an indication of allowance, which is earnestly solicited. Claims 4-6 being dependent upon claim 3, should be allowable for the reasons as set forth in support of claim 3 as well as for the additional features. An indication in that regard is hereby respectfully requested.

CONCLUSION

The foregoing explanations have been submitted to place the present application in condition for allowance. Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this Amendment or the application in general, the Examiner is cordially invited to telephone the undersigned so that prosecution may be expedited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In the event the U.S. Patent and Trademark Office determines than an extension and/or other relief is required, Applicants petition for any required relief including extension of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-2040** referencing docket number **368US1**.

Respectfully submitted,
Cervitech, Inc.

By /Marjorie L. Jarvis/
Marjorie L. Jarvis
Registration No.: 39,238
Tel: (858) 320-4536

c/o NuVasive, Inc.
7475 Lusk Boulevard
San Diego, CA 92121

Date: September 1, 2010